

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1910.

No. 2214.

773

No. 12, SPECIAL CALENDAR.

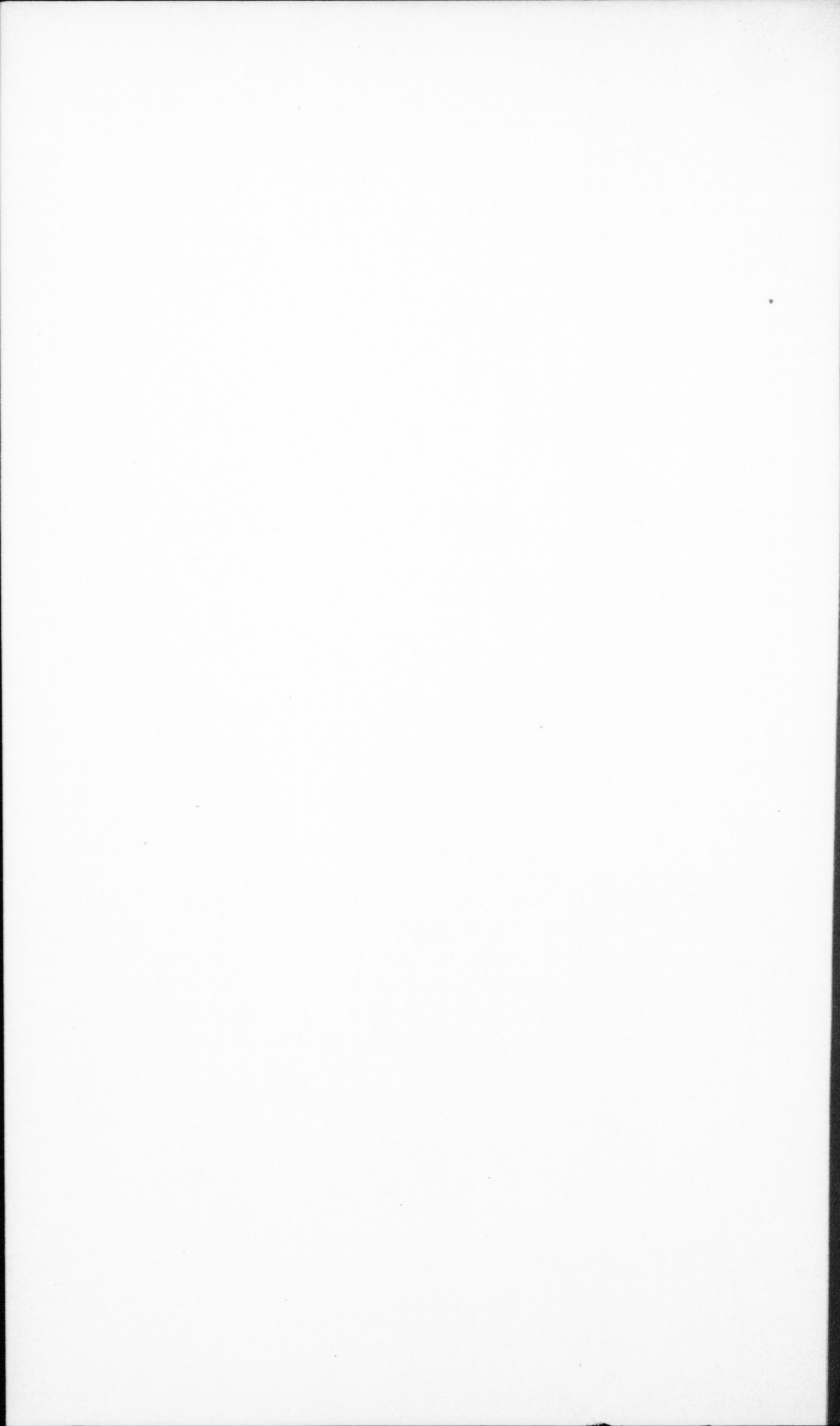
W. B. MOSES & SONS, A CORPORATION, APPELLANT,

vs.

NARCISSA HAYES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED AUGUST 29, 1910.



COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1910.

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vs.

NARCISSA HAYES, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 2214.

W. B. MOSES & SONS, a Corporation, Appellant,
vs.
NARCISSA HAYES.

a Supreme Court of the District of Columbia.

No. 52651. At Law.

W. B. MOSES & SONS, a Corporation, Plaintiff,
vs.
NARCISSA HAYES, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration in Attachment Before Judgment.*

Filed May 26, 1910.

In the Municipal Court of the District of Columbia.

No. 52651.

W. B. MOSES & SONS, a Corporation, Plaintiff,
vs.
NARCISSA HAYES, Defendant.

The plaintiffs sue the defendant for money payable by the defendant to the plaintiffs, for goods sold and delivered by the plaintiffs to the defendant; and for work done and materials provided by the plaintiffs for the defendant at her request; and for money lent by the plaintiffs to the defendant; and for money paid by the plaintiffs to the defendant at her request; and for money received by the defendant for the plaintiffs' use; and for money found to be due

from the defendant to the plaintiffs on accounts stated between them. And the plaintiffs claim \$202.60 with interest from the 29th day of April, A. D. 1910, according to the particulars of demand hereto annexed, besides costs of this suit.

WEBSTER BALLINGER,
W. L. FURBERSHAW,
Attorneys for Plaintiffs.

2

Memorandum.

Bill of Particulars filed by plaintiffs in Municipal Court showing the total sum of \$202.60.

Affidavits.

Filed May 26, 1910.

* * * * *

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before me, a Notary Public in and for the District aforesaid, Ralph A. Hopper, who being first duly sworn deposes and says, that he is credit clerk for W. B. Moses & Sons, the plaintiff named in the above-entitled cause, wherein W. B. Moses & Sons, a corporation, is plaintiff, and Narcissa Hayes, trading as the George Washington Hotel, is the defendant; that he knows the said defendant and has personal knowledge of the facts upon which this action is about to be brought; that said defendant is justly indebted to said plaintiff in the sum of \$202.60 for goods sold and delivered by the plaintiff to the defendant at her request, over and above all set-offs and just grounds of defense, as fully set forth in the annexed bill of particulars, which is a just and true account of said indebtedness and is made a part of this affidavit; that the prices charged for said goods were reasonable and just and were agreed to be paid by the defendant; that said indebtedness has not been paid although due and owing, and often requested; that said defendant has no just grounds of defense hereto; that the plaintiff has a just right to recover against the defendant what it claims in said bill of
3 particulars, to wit, the sum of \$202.60; and that, according to affiant's information and belief, said defendant is about to dispose of her property with intent to hinder, delay or defraud her creditors.

And said plaintiff claims judgment for \$202.60, with interest thereon, besides costs of this suit.

RALPH A. HOPPER.

Subscribed and sworn to before me this 29th day of April, A. D. 1910.

[SEAL.]

PAUL F. GROVE,
Notary Public, D. C.

EXHIBIT 12

Supporting Affidavit.

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before me, a Notary Public in and for the District aforesaid, Webster Ballinger, who, being duly sworn deposes and says; that he makes this affidavit as witness for the plaintiff in the above-entitled cause, wherein W. B. Moses & Sons, a corporation, is plaintiff, and Narcissa Hayes, trading as the George Washington Hotel, is defendant, and in support of the affidavit of Ralph A. Hopper filed herewith; that he is informed and believes that said defendant is about to dispose of her property with intent to hinder, delay, or defraud her creditors; that he is acquainted with the business relations of said plaintiff and said defendant, and knows that the plaintiff has a just right to recover against the said
4 defendant what it claims, to wit, the sum of \$202.60, with interest, for goods sold and delivered by the plaintiff to the defendant at her request, according to the bill of particulars hereto annexed, and made a part hereof.

WEBSTER BALLINGER.

Subscribed and sworn to before me this 29th day of April, A. D. 1910.

[SEAL.]

MORTON J. LUCHS,
Notary Public, D. C.

Bond in Attachment Before Judgment.

Filed May 26, 1910.

In the Municipal Court of the District of Columbia.

No. 52561.

W. B. MOSES & SONS, a Corporation, Plaintiff,

vs.

NARCISSA HAYES, Trading as the George Washington Hotel,
Defendant.

Know all men by these presents, that we W. B. Moses & Sons by Ralph A. Hopper, agent as principal and Alfred J. Smith as surety, are held and firmly bound unto the above-named defendant, in the full sum of Four hundred and five dollars and ten cents (\$405.10) dollars, to be paid to the said defendant her executors, administrators, successors, or assigns, to which payment, well and truly
5 to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, administrators, successors, and assigns, firmly by these presents.

Sealed with our seals, and dated this 29th day of April, A. D. 1910.

Whereas, the above named plaintiff W. B. Moses & Sons has sued out a Writ of attachment against the goods, chattels, and credits of the said defendant found in the District of Columbia.

Now, therefore, the Condition of this obligation is such, That if the above-named obligors shall make good the said defendant all costs and damages which she may sustain by reason of the wrongful suing out of said Attachment, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

W. B. MOSES & SONS,
By RALPH A. HOPPER. [SEAL.]
ALFRED J. SMITH. [SEAL.]

Sealed and delivered in presence of—
WEBSTER BALLINGER.

Approved Apr. 27, 1910.
THOS. H. CALLAN, *Judge*.

Let this Writ issue.
THOS. H. CALLAN, *Judge*.

6

Writ in Attachment Before Judgment.

Filed May 26, 1910.

* * * * *

The President of the United States to the Marshal for said District,
Greeting:

You are hereby commanded to attach, seize, and take into your custody the defendant's goods, chattels, and credits which shall be found in this District, to the value of Two Hundred and two 60/100 Dollars (\$202.60) with interest from the 29th day of April, 1910, being the amount of the plaintiff's claim against *for* the defendant as shown by the 2 affidavits, duly filed in this cause; and the further sum of \$25.00, for the costs and charges which may accrue in the premises; and the same so attached safely keep, subject to the orders of the Court, unless the defendant or the person in whose possession the property is attached, deliver to you, to be filed herein, his undertaking, to be approved by the Court, with sufficient surety or sureties, to abide by and perform the judgment of the Court in relation to said property.

And you shall serve a notice on the defendant, if she be found in the District, and on any person in whose possession any property or credits of the defendant may be attached, to appear in said Court on or before the twentieth day, exclusive of Sundays and legal holidays, after service of such notice, and show cause, if any
7 there be, why the property or credits so attached should not be condemned and execution thereof had; said notice to be served on the defendant by delivering to her a copy of this writ; and

return this writ so indorsed as to show how and when you have executed it.

Witness the Honorable Judges of said Court this Apr. 29, 1910.

F. G. AUKAM, *Clerk*,
By BLANCHE NEFF,
Assistant Clerk.

Appraisement.

We, the undersigned, citizens of the District of Columbia, being summoned and duly sworn by the U. S. Marshal to appraise the following goods and chattels, attached the 30th day of April, 1910, by virtue of the within writ of attachment, do appraise the same to be of the value of \$448.00, to wit:

Goods attached named in schedule attached hereto.

Given under our hands and seals this 11th day of May, 1910.

ADAM A. WESCHLER. [SEAL.]
FRANK C. TOWNSEND. [SEAL.]

Received above property from the U. S. Marshal the — day of —, 190—.

— —.

8

Marshal's Return.

Attached as per schedule herewith and served defendant with a copy of this Writ and Notice prescribed by section 446 of the Code. April 30, 1910.

AULICK PALMER,
U. S. Marshal,
By CARLIN S. ESKRIDGE, *Deputy*.

Judgment.

MAY 19, 1910.

This cause came on to be heard on motion of defendant to quash the attachment and was heard on affidavits and oral testimony, and was argued by counsel and submitted and upon consideration thereof, it is by the Court adjudged and determined that the motion to quash be denied and that plaintiff have judgment of condemnation of the goods attached to the use of the judgment in debt this day rendered against the defendant, in this cause, and for its Costs — with \$—— costs.

C. S. BUNDY. [SEAL.]

Memorandum.

Schedule of Levy by Marshal under writ of attachment amounts to \$448.00.

9 *Motion to Quash Writ of Attachment and Affidavits.*

Filed May 26, 1910.

* * * * *

Now comes the defendant Narcissa Hayes and moves the Court to quash the writ of attachment heretofore issued in this case because there is no supporting affidavit annexed to the declaration and papers served upon said defendant; and on the further ground that the said writ of attachment was improvidently issued, and in this connection, the defendant hereby refers to the affidavits of Narcissa Hayes, Raymond S. Donaldson, and William G. Miller, hereto annexed and hereby made parts hereof, which she hereby asks to be read and considered in connection herewith as parts of this motion; and further, the ground laid for the issuance of said attachment in Ralph A. Hopper's affidavit is made upon his information and belief; the bond in attachment is signed W. B. Moses' Sons by Ralph A. Hopper Agent, with no written authority filed in this cause for such execution; and because of divers irregularities and insufficiencies appearing upon face of said papers and proceedings.

LEVI H. DAVID,
Attorney for Defendant.

Messrs. Webster Ballinger and W. L. Furbershaw, Attorneys for Plaintiff:

10 Please take notice that the foregoing motion will be called to the attention of the Municipal Court of the District of Columbia on Saturday, May 14, 1910, at the hour of 10 o'clock, A. M., or as soon thereafter as counsel can be heard.

LEVI H. DAVID,
Attorney for Defendant.

Service of the foregoing motion together with copies of said motion and affidavits therein referred to hereby acknowledged this 11th day of May, 1910.

WEBSTER BALLINGER,
W. L. FURBERSHAW,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, ss:

I, Narcissa Hayes, on oath, say that I am the defendant in the above entitled cause; I further say that for about 10 years last past I have been proprietress of the George Washington Hotel, 15th & New York Avenue, N. W., Washington, D. C., having a lease on said Hotel property; for and about 2½ years last past I have been proprietress of a boarding house at 822 Connecticut Avenue, N. W., in said City and District; I own the furnishings and considerable personal effects in each of said establishments; being desirous to sell the contents of the George Washington Hotel and the good will in

connection therewith in order to devote all of my time to my boarding house at 822 Connecticut Avenue, several months — I requested Mr. Raymond S. Donaldson, a real estate broker, to find a purchaser for me for said hotel business at 15th & New York Ave., known as “The George Washington,” and about one and one (1½) months

ago, Mr. Donaldson succeeded in interesting Mr. William G. Miller, with whom negotiations for such sale have been, and

11 are now, pending, the purchase price being \$2500 in cash. Up to May 7, 1910, the proposed sale has been of an uncertain quantity for the reason that the lease, which I hold on said George Washington Hotel could not be arranged satisfactorily to the intending purchaser, but on said May 7, 1910, the agent for the landlord and said William G. Miller reached an understanding in regard to said matter and it now seems likely that said sale will be consummated. The intending purchaser, Mr. Miller, has been represented throughout the negotiations by Mr. — Johnson, an attorney, and the two principal matters discussed among Mr. — Johnson, Mr. Miller, Mr. Donaldson and myself, during the course of the negotiations have been the matter of obtaining the consent of the agent for the landlord to transfer the lease and the payment of all the bills due by me in connection with the conduct of the George Washington Hotel in order that the purchaser might obtain a clear title if the sale was made. I told the intending purchaser, before the writs of attachments were issued in the cases of W. B. Moses & Sons, Inc., plaintiff, vs. Narcissa Hayes and Conger Bros., plaintiffs, vs. Narcissa Hayes that I was indebted, on open accounts, to each of said named plaintiffs in each case of over \$200 and that I would pay each of them in full out of the purchase price to be received by me from Mr. Miller or out of my own moneys; I have never expressed to anyone nor have I ever entertained the thought that I intended to assign,

12 convey or dispose of any of my property with intent to hinder, delay or defraud my creditors or any of them. I am and have been financially able, aside from the purchase money which I expect to receive from Mr. Miller, to pay all of my creditors in full and I have never had any intention to sell my property with intention to hinder, delay or defraud any of them. On May 7, 1910, the matter of the lease was arranged, the list of all my creditors, together with respective amounts due by me to them, including the debts due by me to W. B. Moses & Sons, Inc., and to Conger Bros. was duly sworn to by me on May 10, 1910, and said list was on said last mentioned date delivered by me to the attorney for the purchaser in order that the proper notices might be sent to my creditors advising them of the contemplated sale to Mr. Miller; I am informed and believe that Mr. Miller's attorney has mailed notices to said creditors as required by the law. The aggregate amount of debts shown by said list including the bills of Moses & Sons, Inc., and Conger Brothers is not exceeding Eight hundred (\$800) dollars; on May 9, 1910, I withdrew the sum of \$1014.16 from the Calvert Mortgage & Deposit Co. of Baltimore, Md., being proceeds of certain stock owned by me individually, so that I would have sufficient ready money with which to pay my creditors in case any of them

wanted their money before the expiration of the five days allowed by law in the matter of the sale in bulk of a business; I made collections from boarders at my two establishments, and with my cash balance in bank I paid on May 9, 1910, and May 10, 1910, about eight of my creditors, the aggregate amount of which is to wit:

13 \$79.00. I have not yet cashed the two checks, aggregating \$1014.16, being my own funds, received by me from said the Calvert Mortgage & Deposit Co. I ask for leave to exhibit said checks to the Court at the hearing hereof. The purchase price agreed upon between Mr. Miller and myself is \$2500 in cash, three times the amount of the outstanding debts which were held against me. Mr. Conger, one of the members of the firm of Conger Brothers in attachment case No. 5605 against me in this Court, saw me on Tuesday or Wednesday, April 26, 1910, or April 27, 1910, and I told him of the pendency of the negotiations for the sale of my business at the George Washington Hotel and that if the sale went through, I would continue to conduct my boarding house at No. 822 Connecticut Ave., and that I would pay his account on Monday, May 2, 1910, and he said that was satisfactory and he would call for his money on Monday. Thursday, April 28, 1910, Mr. Ballinger came to see me and stated that Conger Bros. had placed the account in his hands for collection and requested me to give him an order on the purchaser; I told him that I was not then in a position to do that, but that if the sale was agreed to, I would pay the bill in full on Monday, May 2, 1910. He said that would be perfectly satisfactory and that he could call to see me on Monday. On Saturday, April 30, 1910, between 9 A. M., and 10 A. M., I was served with the summonses and writs in attachments in the cases brought by Conger Brothers and W. B. Moses & Sons, Inc., against me, Nos. 5605 and 5606, in which said cases said Ballinger is attorney for the plaintiffs, since which time the United States Marshal has been in possession of my hotel, the George Washington.

14 I have sustained great damage and have suffered impairment of credit, by reason of the wrongful issuing of said attachment suits.

I shall bring into this Court, at the hearing of this motion, the amounts in cash to pay said accounts due by me to said Moses & Sons and Conger Brothers.

I am a resident of the District of Columbia and have been for 12 years last past. I ask for leave to exhibit the papers served upon me in said attachment suits, particularly those in the case of Moses & Sons, No. 5606, in which the copy of affidavit of Ralph A. Hopper is signed but the alleged copy of supporting affidavit of Webster Ballinger is not executed.

NARCISSA HAYES.

Witness:

LLOYD A. DOUGLAS.

Subscribed and sworn to before me this 10th day of May, 1910.

I hereby certify that I have initialed all the corrections and erasures which were all made before execution.

[SEAL.]

LLOYD A. DOUGLAS,
Notary Public, D. C.

DISTRICT OF COLUMBIA, ss:

I, Raymond S. Donaldson, on oath say that some months ago Miss Hayes, the defendant in the above entitled case, employed me to find a purchaser for her for the personal property and contents contained in the George Washington Hotel, 15th & New York Ave., N. W., Washington, D. C.; that about one and one-half (1½) months ago I interested Mr. William G. Miller in said matter
 15 and he agreed to buy the same, provided the lease of the said Hotel could be satisfactorily given to him and that all of the debts due by Miss Narcissa Hayes, in connection with said Hotel would be fully paid; the purchase price was \$2500, which Mr. Miller agreed to pay; that during the period aforesaid negotiations have been pending between the parties, the matter of the transfer of the lease and the payment of the creditors of Miss Hayes being the two points of discussion; that before the issuance of the attachments in the cases of W. B. Moses & Sons, plaintiff, against Narcissa Hayes, defendant, and Conger Bros., plaintiff, against Narcissa Hayes, defendant, Miss Hayes stated to me that she was indebted in the sum of over \$200 to each of said named plaintiffs, and that she fully expected to fully pay each of said plaintiffs, either out of the purchase money she would receive from Mr. Miller or out of her own independent means and money; she stated to me that she was fully able to pay all of her creditors in full and that she expected to do so, at the time of the sale of her hotel to Mr. Miller, if it was consummated, and in any event. At no time during the said negotiations did Miss Hayes make any statement to me or in my presence that she intended to assign, convey or dispose of her property with intent to hinder, delay or defraud her creditors or any of them. On May 7th, 1910, the matter of the transfer of the lease to Mr. Miller, intending purchaser, was satisfactorily arranged and it now seems likely that the sale by Miss Hayes to Mr. Miller will be consummated. Miss Hayes has furnished a sworn statement containing a list of all her
 16 creditors, in connection with the George Washington Hotel which includes the names of W. B. Moses & Sons and Conger Brothers, in the amounts sued for by them, and notices have been sent to said named creditors, including said Moses & Sons and Conger Brothers, informing them of the contemplated sale, which sale cannot be consummated until five days shall have elapsed as required by law. The sworn statement of Miss Narcissa Hayes contains the names of fourteen creditors whose claims aggregate \$830.00.

RAYMOND S. DONALDSON.

Subscribed and sworn to before me this 10th day of May, 1910.

[SEAL.]

S. A. TERRY,

Notary Public, D. C.

DISTRICT OF COLUMBIA, ss:

I, William G. Miller, on oath say that about one and one-half (1½) months ago I became interested, through Mr. Raymond S. Donaldson, a real estate broker, as an intending purchaser, of the

personal property of Miss Narcissa Hayes contained in the George Washington Hotel, 15th & New York Avenue, N. W., and negotiations have been pending in regard to such purchase; that a delay ensued in the matter of such purchase because the lease held by Miss Hayes on said Hotel was non-transferable and the agent for the owners desired me to deposit \$1000 as security for the rent, affiant to receive interest on such deposit at the rate of 2% per annum, and I declined to accede to such demand. The matter has now been arranged upon a different basis and I have agreed to pay

Miss Hayes \$2500 for her said personal property with some
17 exceptions, contained in the George Washington Hotel.

When I agreed to purchase said property, and before the issuance of the writs of attachments in the cases of W. B. Moses & Sons vs. Narcissa Hayes, and Conger Bros. vs. Narcissa Hayes I asked said Narcissa Hayes to inform me of the names of her creditors, and the amounts due to them, and she gave me full information in regard thereto, at which time Miss Hayes stated to me that she owed said W. B. Moses & Sons over \$200 and said Conger Brothers over \$200 and she stated to me that the bill of said named creditors as well as all of her creditors would be fully paid by her either out of the purchase money she would receive from me for said property or she would pay them out of other funds possessed by her. At no time during the said negotiations has said Narcissa Hayes expressed any intention to assign, convey or dispose of her said property with intent to hinder, delay or defraud her creditors or any of them, but upon the contrary, she has stated in our conversations that she was possessed of ample means and money with which to pay all of her said creditors in full and that, as part of said transaction with me, she fully intended to so pay them. I have been advised by my Attorney, Mr. — Johnson, as to the provision of the law in said District as to the requirement of proper notice to the creditors of one about to sell personal property in bulk; that Miss Hayes has furnished to me a written statement under oath, setting forth the names of her creditors and amounts due them, in connection with the George Washington Hotel, which list contained the names of W. B.

Moses & Sons and Conger Brothers, in the respective sums
18 for which they have sued her and issued attachments, and that notices have been forwarded to each of said named creditors informing them of the contemplated sale. It was only on May 7th, 1910, that the matter of the lease was arranged satisfactorily to me and it now seems likely that the said sale will be consummated.

WILLIAM G. MILLER.

Subscribed and sworn to before me this 10 day of May, 1910.

[SEAL.]

S. A. TERRY,
Notary Public, D. C.

W. B. Moses & Sons, Furnishings, Carpets, Upholsteries & Wall
Papers, Cor. 11th and F Streets N. W.

Storage Warehouse, 22nd and M Streets.

WASHINGTON, D. C., May 12, '10.

This is to certify that Ralph A. Hopper, who executed a certain bond in the name of, and as agent for W. B. Moses & Sons, a corporation, in the case of W. B. Moses, a corporation, vs. Narcissa Hayes, trading as the George Washington Hotel, said case being now pending in the Municipal Court of the District of Columbia, No. 5606, had full power and authority to execute said bond in the name of, and as agent for, said W. B. Moses & Sons; and said W. B. Moses & Sons, a corporation, hereby ratifies and confirms the act of said Ralph A. Hopper in executing said bond and fully adopts the same.

In testimony whereof, said W. B. Moses & Sons, a Corporation,
has caused its corporate name to be hereunto subscribed by
19 W. H. Moses, its President, attested by Arthur C. Moses, its
Secretary, and its corporate seal to be hereunto affixed this
12th day of May, A. D. 1910.

W. B. MOSES & SONS,
By W. H. MOSES, *President.*

Attest:

[SEAL.] H. C. MOSES,
Vice President.

Motion to Take Oral Testimony.

Filed May 26, 1910.

* * * * *

The plaintiff requests permission to introduce oral testimony at
the hearing of this cause.

WEBSTER BALLINGER,
W. L. FURBERSHAW,
Att'ys for Plaintiff.

May 14, 1910.

Notice of Appeal.

Filed May 26, 1910.

* * * * *

In Justice's Court of the District of Columbia.

Sub-District No. —.

You are hereby notified that I this 21st day of May, A. D. 1910,
note an appeal from the judgments in debt and attachment rendered

20 in the above-entitled cause, and that I shall on the 21st day of May, A. D. 1910, at the hour of 10 o'clock A. M., at the office of Judge Chas. S. Bundy, American Bonding Company of Baltimore, a corporation, Residence No. 1421 G Street, N. W., Washington, D. C., as surety on the undertaking to be entered into herein.

LEVI H. DAVID,
Att'y for Def't.

Service accepted & surety is satisfactory.

WEBSTER BALLINGER,
W. L. F.,
Attorney- for Moses & Sons, Inc.

May 21, 1910.

Undertaking on Appeal.

Filed May 26, 1910.

In the Municipal Court of the District of Columbia.

* * * * *

The defendant Narcissa Hayes desiring to appeal from the judgments in debt & attachment rendered against her in the above-entitled cause, on the 19th day of May, 1910, to the Supreme Court of the District of Columbia said defendant Narcissa Hayes and American Bonding Co. of Baltimore, corporation her surety hereby appearing and submitting to the jurisdiction of the said Supreme Court, undertake, jointly and severally, to satisfy and pay whatever final judgment may be recovered in the said Supreme Court, against said defendant Narcissa Hayes, which judgment they agree may be entered against them jointly, or either of them separately in this case.

Given under our hands this 20th day of May, 1910.

21 NARCISSA HAYES,
AMERICAN BONDING COMPANY
OF BALTIMORE, [SEAL.]
By THOS. J. DE LASHMUTT,
Attorney in Fact.

Approved May 21st, 1910.

C. S. BUNDY, *Judge.*

Surety & undertaking satisfactory.

WEBSTER BALLINGER,
W. L. F.,
Attorney- for W. B. Moses & Sons, Inc.

May 20, 1910.

Certificate of Municipal Court on Appeal.

In the Municipal Court of the District of Columbia.

Filed May 26, 1910.

* * * * *

Date.	Proceedings.
1910.	Plaintiff's attorneys—Ballinger and Furbershaw.
	Defendant's attorney—Levi David.
April 29.	Affidavits (2)—bill of particulars—declaration and undertaking in field. Summons and copy issued returnable May 25, 11 A. M.
" "	Attachment, writ of, issued.
" 30.	" " returned attached as per schedule.
" "	Summons returned, summoned as within directed.
May 11.	Motion to quash and affidavits filed.
May 12.	Certificate from Plaintiffs filed.
" 14.	Subpœna and copies (2) issued by defendant.
" "	" " returned served, etc.
" "	Stipulation of counsel filed.
" "	Request to take oral testimony filed.
" 14.	Adjourned by consent to May 16—9 A. M.
" 16.	Continued to May 17—3 P. M. by Court.
" 17.	Trial—witnesses sworn.
" "	Adjourned to May 18—1 P. M.
" 19.	Judgment for plaintiff for \$202.60 with interest from date and costs.
" "	This cause came on to be heard on motion of defendant to quash the attachment and was heard on affidavits and oral testimony and was argued by counsel and submitted and upon consideration thereof, it is by the court adjudged and determined that the motion to quash be denied and that plaintiff have judgment of condemnation of the goods attached to the use of the judgment in debt this day rendered against the defendant in this cause and its costs.
" 21.	Appeal, notice of, filed.
" "	Undertaking in with American Bonding Company, surety

22

Date.	Proceedings.
May 21.	approved and filed.
" "	Certificate of witnesses filed.
" "	Appeal, record on and papers filed with Clerk of Supreme Court, D. C.

This is to certify, that the foregoing is a true copy of the Docket Entries and of all the proceedings had before the said Court in the above cause, and that the annexed documents are all the original papers filed in said cause.

Witness the Honorable Judges of said Court, this 25th day of May, A. D. 1910.

Costs paid by Plaintiff.....	\$11.83
Costs paid by Defendant.....	2.70

F. G. AUKAM, *Clerk*,
By BLANCHE NEFF,
Assistant Clerk.

Memorandum.

May 27, 1910.—Appearance; Webster Ballinger as attorney for plaintiff and service of summons accepted by him.

23

Motion to Quash Attachment.

Filed May 31, 1910.

In the Supreme Court of the District of Columbia.

At Law. No. 52651.

W. B. MOSES & SONS, INC., Plaintiff,
vs.
NARCISSA HAYES, Defendant.

Now comes the defendant, Narcissa Hayes, by her attorneys Levi H. David and R. B. Behrend, and moves the Court to pass an order herein quashing the writ of attachment issued by the Municipal Court of the District of Columbia, upon the following grounds:

1. Because the Municipal Court had and has no jurisdiction to issue a writ of attachment.

2. Because the pleadings and proceedings in this cause show upon the face thereof that the affidavits of Ralph A. Hopper and Webster Ballinger were each based upon the information and belief of each of said affiants in relation to the ground laid in said affidavits for the issuance of said writ of attachment; and if the law relating to attachments in the Supreme Court of the District of Columbia be applicable to cases arising in the Municipal Court of said District, there is no provision of law authorizing the issuance of an attachment when the affidavit setting forth the ground therefore is based upon the information and belief of the affiant; & if said law be applicable to cases in the Municipal Court, the same was not complied with.

24 3. Because there was no supporting affidavit annexed to the declaration and papers served upon the defendant.

4. Because the bond in attachment is signed W. B. Moses & Sons by Ralph A. Hopper Agent, with no written authority filed in this cause for the execution of said bond by said Agent before the said attachment was issued.

5. For divers other errors and imperfections appearing upon the face of the pleadings and proceedings herein.

LEVI H. DAVID,
R. B. BEHREND,
Attorneys for Defendant.

Mr. Webster Ballinger, Attorney for Plaintiff:

Please take notice that we shall call the foregoing motion to the attention of the court on Friday, June 3, 1910, at ten o'clock, A. M., or as soon thereafter as counsel can be heard.

LEVI H. DAVID,
R. B. BEHREND,
Attorneys for Defendant.

25 *Motion for Leave to Amend Affidavits.*

Filed Jun- 7, 1910.

* * * * * *

Comes now the plaintiff, W. B. Moses & Sons, a corporation, by its attorneys, Webster Ballinger and W. L. Furbershaw, and moves the Court for leave to amend the affidavits heretofore filed in this cause.

WEBSTER BALLINGER,
W. L. FURBERSHAW,
Attorneys for the Plaintiff.

Messrs. L. H. David and R. B. Behrend, Attorney- for Defendant.

SIRS: Please take notice that we shall call the foregoing motion to the attention of the Court on Friday, June 10th, 1910, at 10 o'clock, A. M., or as soon thereafter as counsel may be heard.

WEBSTER BALLINGER,
W. L. FURBERSHAW,
Attorneys for the Plaintiff.

Service of the foregoing accepted this 7th day of June, 1910.

LEVI H. DAVID,
Of Counsel for Defendant.

Motion for Leave to Amend the Attachment Bond.

Filed Jul- 8, 1910.

* * * * * *

26 Comes now the plaintiff, W. B. Moses & Sons, a corporation, by its attorney, Webster Ballinger, and moves the court for leave to amend the attachment bond heretofore filed in this cause by substituting a new bond therefor.

WEBSTER BALLINGER,
Attorney for Plaintiff.

Notice of the above and foregoing notice is hereby waived and service accepted this 8 day of July, A. D. 1910.

LEVI H. DAVID,
Attorney for Defendant.

Supreme Court of the District of Columbia.

FRIDAY, *July 8th*, 1910.

Session resumed pursuant to adjournment, Hon. Wendell P. Stafford, Justice, presiding.

* * * * *

Upon consideration of defendant's motion filed herein, May 31, 1910, by her attorneys of record to quash the writ of attachment herein issued by The Municipal Court of the District of Columbia, it is ordered that said motion be, and the same is hereby granted. Whereupon, it is considered that said writ of attachment be, and the same is hereby quashed, at the costs of the plaintiff for which defendant shall have execution.

Further upon consideration of plaintiff's motion filed herein July 8th, 1910, by its attorneys of record, "for leave to amend the attachment bond heretofore filed in this cause by substituting
27 a new bond therefor"—it is ordered that said motion be, and the same is hereby denied. To which order the plaintiff by its said attorneys noted an exception.

Further upon consideration of plaintiff's motion filed herein June 7th, 1910, by its said attorneys of record—"for leave to amend the affidavits heretofore filed in this cause"—it is ordered that said motion be, and the same is hereby denied.

From the foregoing the plaintiff by its attorneys, in open Court notes an appeal to the Court of Appeals of the District of Columbia, whereupon the penalty of a bond for costs is hereby fixed in the sum of One Hundred Dollars.

Memorandum.

July 15, 1910.—Appeal bond approved and filed.

Directions to Clerk for Preparation of Transcript of Record.

Filed Jul- 30, 1910.

* * * * *

The clerk will include the following additional papers in the transcript of record on appeal of the above case to the Court of Appeals:

1. Memo.: Bill of Particulars filed by plaintiff in Municipal Court claiming the sum of \$202.60 with interest from April 29, 1910.
- 28 2. Schedule of Marshal showing personal property of defendant appraised at \$448. seized by Marshal on April 30th, 1910, under said writ of attachment in Municipal Court.

3. Motion of defendant, with affidavits, filed in Municipal Court, May 11, 1910, to quash writ of attachment.

4. Request of plaintiff filed in Municipal Court to introduce oral testimony.

5. Judgment of Municipal Court, May 19, 1910.

6. Memo.: Appeal noted by defendant; service accepted by plaintiff's attorney; undertaking with surety, entry of plaintiff's attorney that surety is satisfactory; approval of undertaking by Municipal Court, and undertaking filed in M. C. May 21/10.

7. Memo.: Service of summons of S. C. D. C. accepted by plaintiff's attorney and appearance of plaintiff's attorney in S. C. D. C. on June 3, 1910.

LEVI H. DAVID,
Attorney for Defendant.

Service of foregoing accepted:
July 30th, 1910.

WEBSTER BALLINGER,
Attorney for Plaintiff.

Directions to Clerk for Preparation of Transcript of Record.

Filed Jul- 30, 1910.

* * * * *

29 The Clerk will include the following papers in the above case in the transcript of record on appeal to the Court of Appeals:

1. Declaration filed in Municipal Court.
2. Affidavits of Hopper and Ballinger filed in Municipal Court.
3. Bond in Attachment filed in Municipal Court.
4. Writ of Attachment issued in Municipal Court.
5. Certificate of Plaintiff showing Hopper's authority to execute attachment bond filed in Municipal Court.
6. Certificate of Clerk of proceedings in Municipal Court.
7. Motion of defendant to quash writ of attachment filed in Supreme Court May 31, 1910.
8. Motion by plaintiff for leave to amend affidavits filed June 7, 1910, in the Supreme Court.
9. Motion by plaintiff to amend bond filed July 8,'10, in the Supreme Court.
10. Order denying motions to amend affidavits and bond; order quashing writ of attachment; appeal by plaintiff noted in open court.
11. Memo.: Appeal bond approved and filed.
12. This order and designation.

WEBSTER BALLINGER,
Attorney for Plaintiff.

Service of foregoing accepted July 30, 1910.

LEVI H. DAVID,
Attorney for Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 29, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 52651 at Law, wherein W. B. Moses & Sons, a corporation, is Plaintiff and Narcissa Hayes is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 22d day of August, A. D. 1910.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By FRED C. O'CONNELL,
Ass't Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2214. W. B. Moses & Sons, a corporation, appellant, vs. Narcissa Hayes. Court of Appeals, District of Columbia. Filed Aug. 29, 1910. Henry W. Hodges, clerk.

